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IN THE

Supreme Court of the United States

No. 1007

KATHLEEN MOGLIA,

Petitioner,

v.

JAMES GEOGHEGAN, PHILIP STACK, BENEDICT CIAVOLELLA, JOHN CODY, FRANK M. CAMPBELL, CHARLES J. MURPHY, FRANK L. KELLY, EDWIN E. REGNELL, JR., DUDLEY A. SAUNDERS, JOSEPH J. RYAN, WALTER SCHOFFMAN, ABRAHAM SCHWEBEL, CHARLES R. HERSEY and A. LAWRENCE GEROSA, As Trustees of Local 282—PENSION TRUST FUND,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITIONER'S REPLY BRIEF

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PETITIONER'S REPLY BRIEF

The Real Issue

The basic issue posed by this case is whether the written agreement specifying the detailed basis on which payments are to be made into the trust fund, as called for by Section 302 (c)(5)(B) of the Labor-Management Relations Act of 1947, is required to be signed, or whether the congressional mandate is satisfied if there is a written agreement, though not signed, which can be used as a frame of reference to which employers can adhere by making payments into the fund in accordance with the detailed basis specified therein.

In arguing against review of this issue, respondents in their brief to this Court (14-15) point to the clear language of the statute and the unanimity of the courts in interpreting its requirements. If the language of 302(c)(5)(B) is at all clear it is to the effect that a written agreement is required. Nothing is said about having the agreement signed. Had Congress intended that the agreement be signed, it "undoubtedly would have put it into the act itself" (*Dunbar* v. *Painters & Glaziers Dist. Coun.*, 129 F. Supp. 417, 423). Respondents apparently are of the belief that a written agreement denotes a signed agreement. That is not necessarily so. A meeting of minds may be reduced to writing, either by way of a memorandum or a note, which by assent of the parties thereto becomes a written agreement, though not signed.

The obvious intendment of the statute is to regularize and standardize payments by employers to union welfare and pension funds in order to eliminate improper payments by employers. The regularization and standardization of such payments was intended by Congress to be achieved by reducing to writing—by way of agreements, memoranda or any other written instruments—the detailed basis on which payments into the fund are to be made, (c)(5)(B), "with specificity" (*Arroyo* v. *United States,* 359 U.S. 419, 426) so that such payments would become "a matter of record" (*Lewis* v. *Seanor Coal Co.,* 382 F. 2d 437, 443) which employer-representatives, union members or any authorized governmental agency could examine to determine whether there has been proper administration of the trust funds. While it may be desirable from the point of view of the Fund or the contributing employer to have such an agreement signed, the signing of such an instrument is not essential to the carrying out of the legislative scheme. Insistence upon the signing of such agreements is, as we shall see, contrary to the practice widely followed in labor-management welfare and pension funds throughout the United States and would force many pension funds

to discontinue payments heretofore made to pensioners, their widows and orphans, and place many other deserving employees in the unhappy position of having lost their eligibility for pension or welfare funds through no fault of their own and through no misconduct on the part of the trustees administering the funds. The addition to the congressional mandate of a requirement that the written agreement be signed, though the express wording of the statute does not call for the signing and no legislative purpose would be served by such a requirement, is bound to create havoc in the administration of such funds and result in untold deprivation to many of the intended beneficiaries of such trusts. The very purpose of Congress in enacting (c)(5) would thus be defeated by a strained, forced and improper interpretation of legislation designed for the benefit of union members and their families.

Petitioner's position is further supported by the fact that the Congressional debates preceding the enactment of Section 302 contain no reference to a requirement that the written agreement be signed. The emphasis is on the insistence that the trust terms be definite and specific, in order to provide the means of holding the responsible trust officers strictly accountable for the proper administration of the trust funds. The remarks of Senator Taft bear this out.

At 93 Congressional Record, Page 4746:

> "So that the purpose of the provision is that *the welfare fund shall be a perfectly definite fund,* that its purpose shall be stated so that each employee can know what he is entitled to, can go to court and enforce his rights in the fund. . .
>
> "The employee has nothing to say about it. Certainly he is entitled to have us say that *the fund shall be definite,* that his rights shall be determined by law, and that he shall be able to demand them." (Emphasis supplied.)

At 93 Congressional Record, Page 4747:

> "The purpose of the amendment is to require that *the fund shall be established in definite, detailed form,* in the form of a trust fund, with respect to which the *employees can determine their rights* and can insist upon them." (Emphasis supplied.)

The exchange between Senator Taft and Senator Ferguson (93 Congressional Record, Page 4753):

> "*Mr. Taft*: The answer is that *the amendment requires that there be specified in the agreement the exact terms under which the benefits are to be received.* The complete terms with respect to benefits must be set out in the agreement. . .
>
> "*Mr. Ferguson*: I had in mind that at least he could require an accounting under the terms of the fund.
>
> "*Mr. Taft*: Yes, he could require an accounting. . . He would have no individual rights unless there were *provision in law for the inclusion of specific terms.*" (Emphasis supplied.)

The cases relied upon by respondents in support of their position that the written agreement is required to be signed (Br. 14-15) do not bear out their contention.

In *Rittenberry* v. *Lewis*, 238 F. Supp. 506, the United Mine Workers of America Welfare and Retirement Fund was established under the terms of the National Bituminous Coal Wage Agreement. Plaintiff asserted his right to a retirement pension although his employer admittedly was not a signatory to the National Bituminous Coal Wage Agreement and had not made any contribution to the Fund. In sustaining the defendants' motion for summary judgment, the Court stated (at p. 509):

> "It is apparent from the foregoing language that the trust authorized by Section 302 were [sic] for the payment of benefits to employees of employers lawfully making contributions to union welfare trusts. Both the legislative history of the Act and reason

> support this conclusion. That one who had never been an employee of a contributing employer might claim as a beneficiary of the trust merely by reason of being employed in the industry or by reason of union membership would obviously prevent any trust from being established upon a financially or actuarily sound basis. For it would be equivalent to permitting a person who had not been a party to a group insurance plan and for whom no premium contribution had ever been made, to nevertheless claim the status of an insured."

In *Bolgar* v. *Lewis*, 238 F. Supp. 595, the fact situation was similar to the one in *Rittenberry*. Plaintiff's employer was not a signatory to the National Bituminous Coal Wage Agreement nor did it make payments to the Fund during the period plaintiff allegedly worked for the company (p. 597). Under those circumstances, the Court properly concluded that plaintiff was not entitled to pension benefits and dismissed the complaint.

Bolgar and Rittenberry are clearly distinguishable from the instant case. There, the employer in each case had made no contributions to the Fund. Here, Moglia's employer did make regular payments into the Fund for a period of twelve years and the Fund accepted said payments.

The extent to which *Bey* v. *Muldoon*, 217 F. Supp. 401, is inapposite is clearly demonstrated by the following excerpt from the Court's opinion:

> "There can be no doubt that the payment here made does not meet the requirements of § 302(c)(5). It was not paid to a trust fund. It is not, as of now, held in trust for the purpose of being paid out for one of the permitted objects. There is no written agreement setting forth the detailed basis on which payments are to be made. There is no agreement providing for joint administration, with provision for resolving a deadlock, as demanded by § 302(c)(5)(B). There is no provision for an annual audit: § 302(c)(5)(B). In short, the demands of Congress, if a prohibited payment is to be transformed into a permitted one, have simply not been met." (217 F. Supp. at p. 403)

That *Lewis* v. *Seanor Coal Co.*, 382 F.2d 437, is of no help in resolving the issue before us is apparent from the very fact that there the written agreement's provisions relating to trust fund payments were attempted to be modified orally. What is significant, however, is the Court's reasoning in rejecting the claim that such an oral modification was valid (382 F.2d at pp. 442-443):

> "It would be, at the least, incomplete to require for the benefit of the employees and to prevent collusive or fraudulent side arrangements between employers and union representatives that the benefits which the employees are to receive from union welfare funds shall be specified in a written agreement with the employer and yet to permit the written foundation on which the welfare fund rests, in this case calling for the amount of the royalties payable on coal mined, to be the subject of oral modifications. It would expose employer and union representatives alike to the temptations of corrupt bargains, for it would permit the union to extract from an employer a secret promise to pay some other amount into the fund *without requiring such payments to become a matter of record* and thus would frustrate the purpose of § 302(c)(5)." (Emphasis supplied.)

The very fact that the respondents are forced to rely on these wholly irrelevant cases to buttress their argument that (c)(5)(B) requires that there be a signed written agreement is in itself proof—what exhaustive research has already established—that there is no reported case dealing directly and squarely with this issue. The only reported case that meets this issue head-on is *Dunbar* v. *Painters & Glaziers Dist. Coun., supra* (Pet. 14). With all due respect to the Court of Appeals, the quotation from *Dunbar* (Pet. p. 14) relied upon by petitioner may be dicta, but inapposite dicta it is not.

The Importance of This Issue

In opposing the granting of a writ by this Court, respondents (Br. 15) attempt to "play down" the importance of this issue. This is somewhat at variance with the statement made by respondents' counsel in his affidavit in support of respondents' application for an adjournment of the argument of the appeal before the Court of Appeals. There he stated:

> "This case concerns the interpretation of basic statutory requirements for participation in union pension funds established and maintained pursuant to the Taft-Hartley Act and is of great importance to the administration of such funds throughout the country. Research has failed to disclose any Circuit Court decisions dealing with the issues decided by the District Court."

Furthermore, in their Answer to petitioner's complaint, respondent stated that:

> "The issues raised in this action may be expected to arise in future situations involving applications for benefits under the Pension Plan of Local 282—Pension Trust Fund . . ." (Pet. 33a n. 7)

Under the circumstances, it is difficult to believe that respondents, as Trustees of the Local 282—Pension Trust Fund, are wholly unaware that this case has aroused considerable national attention and that the holding of the Court below is viewed with great concern and consternation by those charged with the administration of Section 302 trusts.

This case was discussed briefly in the Legal-Legislative Reporter News Bulletin of the National Foundation of Health, Welfare and Pension Plans. It was thereafter discussed in greater detail in the Current Cases-Pending Legislation monthly materials which are a part of the Negotiated Employee Benefit Plans Service sponored by

the National Foundation in cooperation with Callaghan & Company. At the 1969 annual seminars, to be held in various cities of the country, the case will be the subject of still further discussion (See announcement appended hereto of topics to be discussed at the 1969 seminars of the National Foundation).

Labor Law Bulletin #2-69 of the Associated General Contractors of America is devoted solely to a discussion of *Moglia,* and attached to the Bulletin is the full text of the Court of Appeals opinion. The next bulletin of Associated General Contractors of Massachusetts will contain a note dealing with *Moglia.* Still other articles, comments and notes on *Moglia* are in the process of preparation for publication in various legal and labor publications.

Counsel for numerous Taft-Hartley Trusts from all over the country have either written or telephoned to express their dismay. They are seriously perturbed by the very difficult steps their clients will be forced to take in compliance with the ruling of the Court below. Unless this Court reverses, the Trustees of many Funds will be compelled to discontinue making pension payments to pensioners, their widows and orphans, who have been receiving pensions for many years, and to declare many others ineligible for pension or welfare benefits. However, notwithstanding their marked concern, they have for obvious reasons shied away from taking any steps that may result in identifying their clients as having failed to comply with Section 302 requirements.

Respectfully submitted,

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March 7, 1969

APPENDIX

What Is Ahead for Private Funds — Government Takeover or Partnership?

WHAT ARE THE PROBLEMS?

What governmental regulations exist today?
What is being proposed in the 91st Congress?
What future controls can be anticipated?

AMONG THE PARTICIPATING SPEAKERS ARE:

James A. Curtis, F.S.A.
Vice President and Consulting Actuary
Milliman and Robertson, Inc.

"SOCIALIZED MEDICINE FOR EVERYONE BY 1976?"

Is this desirable? Is it inevitable?
Will private funds still exist?
Will unions still bargain for benefits?
What will happen to trustees and administrators?
What is government's present role and future role?

Richard P. Donaldson, Esq. – *Partner*
Bussel, Donaldson & Hafer

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An explanation of *Moglia v. Geoghegan*

Nelson McClung – *Executive Director*
President's Committee on
Income Maintenance Program

WILL GOVERNMENT CONTROLLED PENSIONS BE NEXT?

What is the purpose of pensions?
– Income replacement
– Income maintenance
– Income redistribution
What is the future for private programs and public programs?

Carlton Stokes – *Vice President*
Cordey Associates

W. W. Ward – *Moderator and Regionals Committee Chairman*
President, W. W. Ward & Associates

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